



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0086]

Group Lotus Plc

Receipt of Petition for Temporary Exemption from an Advanced Air Bag Requirement of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for a temporary exemption from a provision of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Group Lotus Plc has petitioned the agency for a temporary exemption from one advanced air bag requirement of FMVSS No. 208, the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies for its Evora model. The basis for the application is that the petitioner avers compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.¹ This notice of receipt of an application for a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

¹ To view the application, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building 4th Floor, Room W41-213, Washington, DC 20590.

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ADDRESSES: We invite you to submit comments on the application described above.

You may submit comments identified by docket number in the heading of this notice by any of the following methods:

- Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the

comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as “advanced air bags.”² The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes. Prior to this rule, crash tests under FMVSS No. 208 used only one size dummy, a 50th percentile adult male dummy. However, the advanced air bag rule specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard’s crash tests.

The requirements for the vehicle performance in an unbelted 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier crash test and the belted rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) for both the 50th percentile male dummy and the 5th percentile female dummy were phased in beginning with the 2004 model year. Small volume manufacturers were not subject to these advanced air bag requirements until the end of the phase-in period, which was September 1, 2006.

A second phase-in period required vehicles to be certified as passing the belted rigid barrier test requirements at speeds up to 56 km/h (35 mph) using the 50th percentile adult male dummy. This requirement was phased in beginning with the 2008 model year. Small volume manufacturers were not subject to this requirement until the end of the phase-in period, which was September 1, 2010.

² See 65 FR 30680 (May 12, 2000).

The 2000 final rule did not include a higher speed belted rigid barrier test for a 5th percentile adult female dummy. Instead, NHTSA initiated testing to examine the practicability of imposing such a requirement.³

On August 31, 2006, NHTSA published a final rule that increased the maximum test speed for the belted rigid barrier test using the 5th percentile adult female test dummy from 48 km/h (30 mph) to 56 km/h (35 mph).⁴ This new requirement was phased in beginning with the 2010 model year. Small manufacturers are not subject to this requirement until the completion of the phase in period, which is September 1, 2012.

In recent years, NHTSA has addressed a number of petitions for exemption from some of the initial advanced air bag requirements of FMVSS No. 208. The majority of these requests came from small manufacturers, each of which petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA granted a number of these petitions, usually in situations in which the manufacturer was supplying standard air bags in lieu of advanced air bags.⁵ In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

³ See 65 FR 30690.

⁴ See 71 FR 51768.

⁵ See, e.g., grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

Notwithstanding those previous grants of exemption, NHTSA has considered two key issues--

- (1) whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and
- (2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA has determined that it is not in the public interest to continue to grant exemptions from these requirements under the same terms as in the past.⁶ The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA has concluded that the expense of advanced air bag technology is

⁶ See denial of petition of Pagani Automobili SpA, 76 FR 47641-42 (Aug. 5, 2011).

not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.⁷

NHTSA further notes that the granting of hardship exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith."⁸ In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.⁹

NHTSA invites comment on how these considerations relate to Lotus's petition for an exemption from the higher speed belted rigid barrier test using the 5th percentile adult female test dummy. In this respect, Lotus notes that it seeks exemption from only a single test performance requirement rather than all of the advanced air bag requirements.

II. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

⁷ See *id.*

⁸ 49 U.S.C. 30113(b)(3)(B)(i)

⁹ 49 CFR 555.6(a)(2)

The Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.”

NHTSA established Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of

"manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"¹⁰ the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Group Lotus Plc (Lotus) has submitted a petition asking the agency for a temporary exemption from one advanced air bag requirement of FMVSS No. 208 for its Evora model. Specifically, the petition requests an exemption from the advanced air bag requirement in S14.7, which requires vehicles manufactured on or after September 1, 2012, to meet the higher maximum speed (56 km/h (35 mph)) belted test requirement

¹⁰ 49 U.S.C. 30113(b)(1).

using the 5th percentile adult female dummy.¹¹ Lotus requests this exemption only for the front passenger seat. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Lotus has requested an exemption for a period of 31 months from September 1, 2012 to March 31, 2015.

Lotus is a United Kingdom corporation. In the year prior to the filing of its petition, Lotus produced a total of 3,115 vehicles.¹² Lotus states that, since its inception, it has never manufactured more than 10,000 vehicles in a year. Lotus states further that, although it is owned by the Malaysian automobile manufacturer Proton, Proton is not a “sponsor” of Lotus and its production should not be (and historically has not been) aggregated with Lotus’s production for the purpose of determining eligibility for a temporary exemption. Lotus anticipates that the number of exempted vehicles imported to the U.S. if this petition is granted would be approximately 800.

Lotus previously obtained an exemption from the advanced air bag requirements for its Elise model.¹³ In its petition for exemption from the advanced air bag requirements for the Elise, Lotus committed to equipping its next model, the Evora, with compliant advanced air bags. Lotus states that, since its introduction to the U.S. market in 2010, the Evora has been fully compliant with FMVSS No. 208. However, Lotus states that its sales have been lower than projected because of Lotus’s financial hardship,

¹¹ In its petition, Lotus asks for exemption from S15.1(b) and S16.1(a)(2) as well. However, those provisions apply to only those vehicles certified as complying with S14.6 or S14.7. If an exemption is granted, the vehicle would not be required to be certified to S14.7. S14.6 is the phase in for the higher speed 5th percentile adult female belted barrier test requirement that is not applicable to Lotus. In that instance, neither provision would apply to the exempted vehicles. Furthermore, S16.1(a)(2) is the test procedure for conducting the rigid barrier test using 5th percentile adult female dummies. This test procedure contains no substantive requirements for which Lotus would need exemption.

¹² This total includes 690 vehicles that were assembled for Tesla Motors, Inc.

¹³ See 71 FR 52851, 52859-62 (Docket No. NHTSA-2006-25324).

exacerbated by the global recession; emergence of competition in its market segment; and the withdrawal of the Elise from the U.S. market. Furthermore, Lotus states the Evora's advanced air bag system will not comply with the higher speed 5th percentile female belted occupant (passenger side, fully forward seat position) barrier crash test without sourcing new components and conducting a complete revalidation of the system. Lotus previously believed that Evora sales would have been augmented by a new product using substantially the same platform, upon which compliance with the higher speed 5th percentile female belted requirements would have been developed. However, Lotus states that it stopped that development program due to poor Evora sales and repositioning of its business (moving from the entry level premium segment to the high performance, luxury sports car segment).

Lotus states that the Evora cannot meet the higher speed 5th percentile female belted test requirements because the Evora's air bag electronic control unit (ECU) does not have the capability to monitor whether the seat belt is buckled and its seat belt supplier does not have a suitable buckle switch. A buckle switch would allow the ECU to fire only the first stage of the air bag inflator for buckled occupants while firing two stages for unbuckled occupants, allowing the stiffness of the air bag to be different for belted and unbelted occupants. In order to incorporate a buckle switch in the Evora, Lotus states that a new air bag ECU would need to be sourced, calibrated, and validated; a new seat belt system would need to be sourced; and a complete series of development tests would need to be conducted.

Lotus expects that this development would cost over \$4 million. Lotus states that it does not have sufficient financial resources to complete this development. Lotus's

financial statements show that from the period between April 2007 and March 2010, the company experienced losses of approximately \$40 million. With an exemption, Lotus predicts that it would make a profit of approximately \$24 million between April 2010 and March 2014. Without an exemption, Lotus predicts its profit in the same period would be reduced to \$13 million. However, Lotus contends that the financial impact would be greater because, without the exemption, Lotus would withdraw from the U.S. market and lose its market share, resulting in intangible losses such as loss of brand image, complication of reentry into the U.S. market in the future, and job losses.

Lotus states that it has considered alternative means of compliance, but these alternatives have been found to be incapable of providing a solution. Lotus states that it could not use a seat belt buckle sensor from its current seat belt supplier because the switch is inadequate and there is not a suitable ECU. Lotus states that it considered moving the passenger seat rearward, but concluded it would have to reevaluate compliance with the 50th percentile male tests in both the belted and unbelted conditions which would result in similar costs to those described above. Lotus also states that it considered fixing the passenger seat in the mid-position, but concluded that occupant ingress/egress would be adversely affected and it would prevent a 95th percentile occupant from fitting in the passenger seat.

Lotus states that, while an exemption is in effect, it will provide advice and warnings in its owners' manual identifying the risks associated with correct positioning of the seat belt and sitting too close to the air bag.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has tentatively concluded that the petition from Lotus is complete and that Lotus is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Lotus's application for a temporary exemption from the higher speed 5th percentile adult female belted barrier crash test in S14.7 of FMVSS No. 208. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: June 26, 2012

Nathaniel Beuse
Director, Office of Crash Avoidance
Standards

Billing Code 4910-59-P

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